

Spheres of Influence

What **GATT**

Begot: Environment versus Trade



Supporters of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) breathed a sigh of relief when the complicated international agreement was approved by the 103rd Congress in its post-election session, but the reactions of environmental organizations ranged from mild anxiety to outright alarm.

GATT, the first global trade agreement, originated in 1947 as an effort to eliminate tariffs, quotas, and other restrictions developed by nations to prevent foreign-manufactured products from making inroads on their domestic markets. The agreement is administered by the World Trade Organization, an agency of the United Nations, with headquarters in Geneva.

In 1986, President Ronald Reagan initiated the Uruguay Round of GATT negotiations, with the aim of including additional economic sectors, such as agriculture and services, within the scope of the pact, and establishing mechanisms for settling conflicts between the flow of international trade and the laws of individual nations, including regulations affecting public health and the environment.

After the 1994 congressional elections, the vote on GATT sped through the Congress, supported by the Clinton administration, a majority of Republicans, and a broad range of trade organizations. "Our organization supported GATT because it will open new markets, increasing American exports to emerging markets in Southeast Asia, the Pacific Rim, and elsewhere," says Joe Davis, a spokesman for the National Association of Manufacturers (NAM), which strongly supported GATT, but took no position regarding its environmental impact. "Our manufacturers will

make more items and create more jobs for American workers," Davis said.

But what was good news for businesses eager for new markets was bad news for others. "The new trade rules established in the Uruguay Round of the General Agreement on Tariffs and Trade . . . directly address environmental standards, but they do so by imposing stark limits on environmental initiatives," wrote Patti Goldman, staff attorney with the Seattle office of the Sierra Club Legal Defense Fund in a November 1994 report, *Dolphins, Pesticide Bans, Gas Guzzlers, and Recycling Programs: International Trade Rules Will Determine Their Fate*.

Worldly Worries

Environmentalists are concerned about the ramifications of GATT for a number of reasons. Primarily, they worry that GATT provisions may be used by foreign countries to circumvent state and federal environmental and health laws in the United States. For instance, Public Citizen, the consumer protection group led by Ralph Nader, warned that such bulwarks as the Delaney Amendment, which prohibits carcinogenic additives to foods, might be overruled on the grounds that these restrictions constitute unfair barriers to international trade. Because GATT requires that environmental laws be "based on scientific principles," laws requiring warning labels on foods and products that contain toxic substances are perceived by some to be at risk if GATT panels decide against laws that limit risk even in cases where there is not definitive science.

Such critics as conservative Patrick Buchanan worry that if decisions by WTO functionaries could overturn U.S. laws, the treaty may mean that some of the sovereignty of the nation has been traded away. But Charles W. Cooper, director of the International Activities Staff of the Center for Food Safety and Applied Nutrition at the FDA, says "The idea that the U.S. would lose its sovereignty to a bunch of bureaucrats in Geneva is nonsense. Those who negotiated the agreement for the U.S. were looking out for the regulatory agen-

cies, and both FDA and EPA were intimately involved in the negotiations here and in Geneva to make sure the trade people didn't give away any of our regulatory authority. I think all the possible leaks are pretty well plugged."

Kristin Dawkins, director of research for the Institute for Agriculture and Trade Policy, a Minneapolis nonprofit research and education organization that safeguards the interests of family farmers, charges that the deliberations leading to GATT involved little input from professionals with expertise in public health or environmental sciences, while the negotiators included what Dawkins calls "a lot of revolving-door types" whose careers zigzag from corporations to government agencies to law firms representing both. "Commercial interests predominated throughout the proceedings and GATT's final text reflects their views," agreed the Sierra Club's Goldman.

One provision environmentalists especially dislike concerns the role of the Codex Alimentarius, an agency organized by the United Nations' World Health Organization and Food and Agriculture Organization to set global standards for food safety. One goal of GATT is to "harmonize" global environmental and food safety standards so that no government can impose standards on imported foods more stringent than those set by Codex Alimentarius. "This attempted preemption of our food safety standards could require U.S. regulatory agencies to raise the allowable levels of pesticide and food additives in imported foods, including DDT, Alar, antibiotics and bovine growth hormone," says Hal Hamilton of the Community Farm Alliance's Southern Sustainable Agriculture Working Group.

Cooper replies that Codex standards largely duplicate those of the United States, which has representatives on all of the Codex committees. If anything, Cooper argues, GATT will help pressure other countries to conform to higher U.S. standards because it gives teeth to decisions of dispute-resolution panels which countries that disagreed could ignore in the past. Now these decisions can be backed up with surcharges, tariffs, and changes in statutes.

Under GATT, each country will continue to decide for itself how much environmental risk it will tolerate from an imported product. If another country wants to market a product that falls short of that standard, they must apply to the appropriate agency—in the United States, to FDA in the case of foods, drugs, cosmetics, or medical devices, or to the EPA if, for example, pesticide residues are at issue. Thus, if another country wanted to market in the United States a food sweetened with sodium cyclamate or potassium cyclamate, substances shown to be weakly carcinogenic in animals, it would be forbidden to do so because the Delaney Amendment to the Food, Drug, and Cosmetic Act bans the addition of any carcinogen to a food product. If a country attempted to ship products containing cyclamates into the United States, Cooper declares, “We’d stop it at the border. That’s our law and we’re going to enforce it.” But in a dispute resolution, Cooper concedes, “We might lose, since cyclamates have not been proven carcinogenic to humans,” adding that the FDA is not overly concerned at the possibility. If Congress wanted the Delaney Amendment to stand, they could reconfirm the measure. And, GATT’s “level of protection” clause would then ensure that foods containing cyclamates would continue to be disallowed in the United States. However, state laws that impose standards higher than those set by FDA may be vulnerable to challenge. Individual states will not be represented on the dispute-resolution panel. If a challenge to a state law is upheld, the federal government could choose to protect the law, thus incurring trade sanctions; pressure the state to change the law, by threatening to withhold federal funds, for example; or force the state to change the law by asking congress to preempt it.

Dispute Resolution

Under GATT rules, a foreign manufacturer could ask their government to challenge a U.S. law forbidding import of certain substances. Such disputes are to be resolved by three-person secret panels of trade experts experienced in representing their countries in GATT as administrators, governmental trade officials, or academic specialists in international trade law or policy. With the 1994 version of GATT still in the ratification process, no such challenges have yet been made.

Environmentalists fear that GATT dispute-resolution panelists, drawn from the international trade profession, will automatically promote freedom of the marketplace over human health and environmental concerns. They argue that the Uruguay Round’s fundamental principle might be

stated, “First, do not restrict international trade.” In matters ranging from inspecting cattle to banning the importation of chewing tobacco, nations are required to do what interferes least with the international flow of goods and services.

It’s true that WTO dispute-resolution panels traditionally met quietly and kept no transcripts. The clandestine style evolved into official procedures as stated in the Uruguay Round. Deliberations are confidential; the views expressed by panelists are anonymous, although a country may, if it wishes, make its own submission public. No public hearings are held, no outsiders participate, and no provision exists for consumers or concerned organizations to submit information, technical comments, or dissenting views. Only the countries involved in the dispute are represented.

Critics of GATT want the decision-making process democratized, opened up, and made less elitist. The United States, in fact, argued strongly for exactly these changes in GATT negotiations, says William Jordan of the Office of Pesticides at the EPA, one of many EPA staffers who assisted U.S. negotiators. “We didn’t get everything we wanted, but the panel decisions and explanations, like decisions of a court, are a matter of record. Under GATT, a dispute is between countries, not individuals or corporations. Each country decides the level of access it wants to provide. In the U.S., we regularly consult with people other than trade experts, and involve citizens and advocacy groups.”

Jordan likens the GATT process to that of a courtroom, with countries, rather than individuals, filing positions or briefs. If it seems exclusionary, he notes, it is because Americans are used to greater openness than is traditional elsewhere. The EPA, he notes, regularly involves interest groups and consumers in developing its positions on trade issues. “We’ve never suffered from a lack of public input, but it’s probably fair to say we might do more to make the process more open.” Congress could lay out procedures to be followed by regulatory agencies in GATT-related matters, and these might include provisions for public hearings.

In a way, says Jordan, GATT is only a framework, which will be fleshed out, case by case, over time. The questions left open will be decided in the course of working within GATT. “The U.S. should have no difficulty in defending its regulatory standards in the process of protecting the safety of the nation’s food supply,” he says, pointing out that other countries will recognize that if they challenge U.S. standards and get them set aside, that means their own standards can be challenged and set aside as well. “I think other governments

will be careful not to use these provisions of GATT in ill-advised ways.”

Rules and Regulations

Nations which sign on to GATT are required to treat imports from other countries no less favorably than “like” products made domestically. This principle is known in trade jargon as “national treatment”; what it will mean depends on how dispute resolution panels interpret like products.

Recent GATT decisions suggest that only the finished item for sale to the public may be considered, says Hawkins. If the imported product and the domestic one are equivalent, the manufacturing processes by which they were made (“production process methods,” or “PPMs” in GATT terminology) may not be taken into consideration. Regulations may not be used to give an advantage to a recyclable product or penalize one whose manufacturer pollutes. Some critics say GATT’s like-products provisions contain the implicit message that trade regulations may not be used to impose a country’s environmental values on products made elsewhere.

These rulings could keep the United States from disallowing imported products made from harmful raw materials or that employ environmentally irresponsible processes or harvesting methods. Likewise, they might thwart the effectiveness of programs that reward domestic manufacturers who agree to dispose of environmentally harmful by-products or packaging materials.

This possibility, and others, will have to be determined over time, as agencies and nations get used to working with GATT. “You can look at GATT and ask whether a phrase might be interpreted one way rather than another, and I’d have to agree that it might be possible, but not very probable,” says Jordan. “I like to assume good faith on the part of people who are engaging in discourse about public policy.”

Because enforcing strong regulations costs money and time and may run counter to some economic, health, or environmental interests, a nation may be reluctant to defend its regulations if a foreign supplier has persuaded its own government to challenge them. In addition, the regulations may be unpopular among a politically important group, such as large-scale farmers who would welcome the relaxation of limits on some pesticides.

But Cooper points out that there’s a worldwide trend toward lowering the use of pesticides, with much of the impetus coming from Northern Europe. “It’s not widely recognized here that, as developed countries go, the U.S. is somewhat more lenient and less restrictive about pesticide residues. There won’t be pressure to raise the limits; late in 1994, the administration

proposed making them more restrictive, in keeping with the historical trend."

It's possible that GATT might have an adverse effect on small and mid-sized farms in the United States. As imported products enter the American market, diversified farmers may not be able to compete with those growing one or two crops. A 1989 study by two Department of Agriculture economists, Vernon Roningen and Praveen Dixit, calculated that after five years of completely free trade, as envisioned by the Bush Administration, revenues to U.S. farms would decline by 13% with a net loss of \$16.2 billion to farmers, coupled with a \$4.6 billion increase in food prices for American consumers. While the price increase would be offset by

savings in taxes now spent on farm programs, the loss of farm income would amount to 163% for farms grossing from \$20,000 to \$40,000, while farms that gross more than \$500,000 would suffer only a 7% decline.

If Roningen and Dixit are right, the cost of agricultural "harmonization" would be borne directly by small and medium-sized family farms, and indirectly, by reimposing burdens on the environment via loss of crop diversity and potential increase in pesticide use. The ideal of sustainable agriculture would fade, Hamilton fears. "The end result would be family farmers pitted against environmentalists, where everyone would lose," he says.

Although the Uruguay Round's provi-

sions became effective as of 1 January 1995, the WTO has two years in which to develop its own procedures and guidelines. During that time, the groups that spearheaded the efforts to make environmental responsibility a corporate value are now working to ensure that the environment and human health and safety will receive appropriate emphasis as WTO pursues free trade and global prosperity.

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